

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

0068905-000267

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on _____

Signature _____

Typed or printed name _____

Application Number

10/549,670

Filed

July 3, 2006

First Named Inventor

Silica-Based Indicating Dessicants

Art Unit

1797

Examiner

Bryan T. Kilpatrick

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

/Duane A. Stewart III/

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Duane A. Stewart III

Signature

Typed or printed name

☒

attorney or agent of record.

Registration number 54,468

412-562-1622

Telephone number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

March 30, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below.

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*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	PATENT APPLICATION
	:	
Stephen Moreton	:	Silica-Based Indicating Desiccants
	:	
Serial No.: 10/549,670	:	Group Art Unit: 1797
	:	
Filed: July 3, 2006	:	Confirmation No. 3701
	:	
	:	Examiner: Bryan T. Kilpatrick

SUBMISSION FOR REQUEST FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed pursuant to the July 12, 2005 Notice in the Official Gazette entitled "New Pre-Appeal Brief Conference Pilot Program" and in accordance with the subsequent Notice of January 10, 2006 extending the pilot pre-appeal brief conference program until further notice. This paper is filed with a Notice of Appeal that is timely with the extension of time of three months that is included herewith. If further payment is necessary to make this Appeal timely, kindly deduct the necessary amount from Deposit Account No. 02-4800, in the name of Buchanan Ingersoll PC.

Claims 1 and 4-35 are pending. Claims 1 and 29 are independent claims. The remaining claims depend directly or cognately from claim 1 or claim 29.

Claims 1, 4-11, 19-29, 32, and 34-35 stand rejected under 35 U.S.C. § 102 as allegedly anticipated by International Patent Application Publication No. WO02/057772, to Moreton (the "772 publication"). Claims 1 and 4-35 stand rejected under 35 U.S.C. § 103 as allegedly obvious over the '772 publication.

As argued in Applicant's March 1, 2010 Response, nothing in the '772 publication teaches a combination of Fe and Br salts to provide an indicator that works below 20% relative humidity with a copper level below 0.002% by weight. The indicating desiccant claimed in the instant application "is essentially copper-free, or when copper is present it is in an amount which is less than 0.002% by weight with respect to the anhydrous silica-based material." (emphasis added). Separate dependent claims are directed to each of the underlined limitations.

Although the '772 publication states that "the source of copper...is up to 0.5 per cent by weight of the silica-based material," ('772 application, page 2, lines 23-25), the '772 publication states that the lowest useful range of copper is "in the range 0.002 to 0.1 per cent by weight." ('772 application, page 2, line 26). The successive ranges recited in the '772 publication only increase the amount of copper, they do not decrease it. ('772 application, page 2, lines 26-28). The '772 publication teaches the opposite of the claimed invention.

The December 31, 2009 Office Action asserts that the disclosure of "**up to 0.5 percent** ... expressly encompasses copper-free and less than 0.002% by weight." (Office Action, pages 10-11) (emphasis in original). That argument ignores the express teachings and intent of the '772

publication. The '772 publication is "based on copper salts...." ('772 publication, page 2, line 6). All of the stated embodiments of the '772 publication include copper. The abstract of the '772 publication states that the indicating desiccant includes "a source of copper."

Put simply, the disclosure of "up to 0.5%" in the '772 publication can not teach claim limitations that are "essentially copper free" or "less than 0.002% by weight." The '772 publication does not teach a composition where copper is an optional component that may be present "up to" a given percentage, but where the composition would still function if copper were excluded. If the composition of the '772 publication were copper-free, or if it had less than 0.002% copper, the entire disclosure would be frustrated.

The Office has also misapprehended the difference between reduction of humidity and indication of reduction of humidity. The claims of the instant application require a color change below 20% relative humidity. The '772 publication, on the other hand, limits the color change to an equilibrium relative humidity "between 20 to 30 per cent." ('772 publication, page 3, lines 13-14). The reason for this is clear: the desiccant of the '772 publication is intended to reduce the relative humidity of a gas to below 30%, then the desiccant is to be replaced. ('772 publication, page 3, lines 13-15). There is no motivation in the '772 publication to decrease the level of the indicator below 20% in the '772 publication, because the desiccant is only intended to be effective to a level below 30 per cent - that is, just below 30 per cent - and not, significantly, a level "up to" 30 per cent, which the '772 publication could have included if such were the intent.

Furthermore, Applicant notes that reduction of copper in the 'composition of the '772 publication would not lead to a reduction in the ability to work below 20% relative humidity.

The opposite is the case. This argument is explored in more detail on pages 10-11 of the March 1, 2010 Response. Additionally, there would be no expectation of success when modifying the '772 publication to obtain the claimed invention, because the claimed invention is an iron-based indicator system and the '772 publication reports a copper-based system. This argument is outlined in more detail on page 11 of the March 1, 2010 Response.

Applicant has demonstrated, both above and throughout the prosecution, that the rejections made in this application are improper. The rejections should be withdrawn and the claims allowed. Applicant notes that failure to raise an argument in this Submission is not a waiver of that argument on appeal. Furthermore, failure to separately argue the patentability of one or more dependent claims should not be construed as an admission that the claims are not separately patentable. If communication with the undersigned might help resolve any outstanding issues with this application, the Examiners are invited to call the number below.

Respectfully submitted,

Dated: March 30, 2010

/ Duane A. Stewart III /

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